A **KERAJAAN NEGERI SELANGOR & ORS**

v.

PENDAFTAR PERTUBUHAN MALAYSIA & ANOTHER APPEAL

B

COURT OF APPEAL, PUTRAJAYA
BALIA YUSOF WAHI JCA
LIM YEE LAN JCA
HAMID SULTAN ABU BACKER JCA
C [CIVIL APPEALS NO: W-01-44-01-2012
& W-01-43-01-2012]
20 NOVEMBER 2013

CIVIL PROCEDURE: *Locus Standi - Judicial review - Registrar of*
D *Society (ROS) cancelled registration of registered society - Application to quash decision of ROS - Whether decision of ROS affected applicants' legal rights - Test of substantive locus standi - Whether public interest litigation - Whether applicants had locus standi - Societies Act 1966, s. 13(1)(a)*

E

UNINCORPORATED ASSOCIATIONS: *Societies - Judicial review - Registrar of Society (ROS) cancelled registration of registered society - Application to quash decision of ROS - Whether decision of ROS affected applicants' legal rights - Test of substantive locus standi - Whether public interest litigation - Whether applicants had locus standi - Societies Act*
F *1966, s. 13(1)(a)*

The two appeals and cross-appeal herein were against the decision of the High Court in respect of two applications for judicial review in Suits No. R3-25-161-2009 and R3-25-163-2009. BALKIS, an
G acronym for Badan Amal Dan Kebajikan Isteri-isteri Selangor, a registered society since 17 May 1985, was made up of wives of the Selangor State Assemblymen and Members of Parliament. As a result of the change in the State Government of Selangor in 2008, BALKIS held and extraordinary general meeting and passed
H a resolution to dissolve itself and transfer its funds to another society known as BAKTI. The respondent, Registrar of Societies, thereafter cancelled the registration of BALKIS pursuant to s. 13 of the Societies Act 1966 ('the Act'). In the High Court, the applicants/appellants contended that the respondent had failed to
I comply with s. 13(1)(a) of the Act when he cancelled the registration of BALKIS without undertaking a verification of the

dissolution. The High Court Judge held that the second applicant in Suit No. R3-25-161-2009 had the legitimate expectation to assume the position as the Yang Di-Pertua of BALKIS and hence the necessary *locus standi* to receive the remedies sought in the application. However, the application by the other applicants including application in Suit No. R3-25-163-2009 were dismissed. The High Court Judge found that the other applicants lacked competence as they had not been able to demonstrate that the decision of the respondent in de-registering BALKIS had affected their legal rights. The applicants contended that the test used by the High Court Judge in finding that they had no *locus standi* was wrong as the test of substantive *locus standi* is very much a test of the merits of the complaint. The applicants further submitted that the case was in the nature of public interest litigation wherein the disbursement and usage of public funds were in issue.

Held (allowing appeal and dismissing cross-appeal)
Per Balia Yusof Wahi JCA delivering the judgment of the court:

(1) The State Government and its instrumentalities had used the state funds to maintain the activities of BALKIS and hence, had injected the public interest element in the applicants' case for judicial review. The element of public interest was further substantiated by the fact that BALKIS was essentially the welfare and charitable arm of the State Government of Selangor and was formed for the benefit of the general public of Selangor. In the circumstances, this was a public interest litigation matter and the courts should be more willing to lend its ears to public interest litigants. (paras 20 & 22)

(2) The authorities were clear in paving the way for a more liberal view towards the granting of *locus*, especially to public interest litigants. The courts should be reluctant, having considered the merits and formed a favourable view to an applicant, to deny relief on the basis of want of standing. The requirement to show legal interest and being adversely affected by the decision of the public authority is not in tandem with the more liberal and modern approach towards public interest litigants. On the facts, the court was convinced that the applicants were not phantom busybodies or ghostly intermeddlers. Hence, the applicants in both appeals had the *locus standi*. On the

A other hand, there were no merits in the argument that the applicants in Suit No. R3-25-161-2009 had no *locus*. Therefore, the cross-appeal by the respondent was dismissed. (paras 25-27)

B ***Bahasa Malaysia*** *Translation Of Headnotes*

Kedua-dua rayuan dan rayuan balas di sini adalah terhadap keputusan Mahkamah Tinggi berkaitan dua permohonan bagi semakan kehakiman dalam Guaman No. R3-25-161-2009 dan R3-25-163-2009. BALKIS, akronim bagi Badan Amal Dan Kebajikan
C Isteri-isteri Selangor, sebuah pertubuhan berdaftar semenjak 17 Mei 1985, terdiri daripada isteri-isteri Ahli Dewan Undangan Negeri dan Ahli Parlimen. Berikutan pertukaran Kerajaan Negeri Selangor dalam tahun 2008, BALKIS mengadakan mesyuarat
D agung luar biasa dan meluluskan resolusi untuk membubarkan pertubuhan tersebut dan memindahkan dananya kepada suatu pertubuhan lain dikenali sebagai BAKTI. Responden, Pendaftar Pertubuhan, kemudian membatalkan pendaftaran BALKIS di bawah s. 13 Akta Pertubuhan 1966 ('Akta'). Di Mahkamah Tinggi,
E pemohon-pemohon/perayu-perayu menghujahkan bahawa responden telah gagal mematuhi s. 13(1)(a) Akta apabila beliau membatalkan pendaftaran BALKIS tanpa melaksanakan pengesahan pembubaran. Hakim Mahkamah Tinggi memutuskan bahawa pemohon kedua dalam Guaman No. R3-2-161-2009
F mempunyai harapan yang sah untuk menjawat jawatan sebagai Yang Di-Pertua BALKIS dan dengan itu, mempunyai *locus standi* yang perlu untuk menerima remedi-remedi yang dipohon dalam permohonan tersebut. Walau bagaimanapun, permohonan pemohon-pemohon lain termasuk permohonan dalam Guaman No.
G R3-25-163-2009 telah ditolak. Hakim Mahkamah Tinggi mendapati bahawa pemohon-pemohon tidak mempunyai kompetensi kerana mereka tidak berupaya menunjukkan bahawa keputusan responden dalam membatalkan pendaftaran BALKIS telah menjejaskan hak-
H hak perundangan mereka. Pemohon-pemohon menghujahkan bahawa ujian yang digunakan oleh Hakim Mahkamah Tinggi dalam memutuskan bahawa mereka tidak mempunyai *locus standi* adalah salah kerana ujian *locus standi* substantif adalah lebih kepada menguji merit aduan. Pemohon-pemohon selanjutnya menghujahkan bahawa kes ini adalah bersifat litigasi kepentingan awam di mana
I pembayaran dan penggunaan dana awam menjadi isu.

Diputuskan (membenarkan rayuan dan menolak rayuan balas)
Oleh Balia Yusuf Wahi HMR menyampaikan penghakiman mahkamah:

(1) Kerajaan Negeri dan perantaranya telah menggunakan dana negeri untuk menjalankan aktiviti-aktiviti BALKIS dan dengan itu, telah menyuntik elemen kepentingan awam dalam kes pemohon-pemohon untuk semakan kehakiman. Elemen kepentingan awam dikuatkan lagi oleh fakta bahawa BALKIS adalah pada asasnya cawangan kebajikan dan amal Kerajaan Negeri Selangor dan dibentuk bagi faedah umum di Selangor. Dalam keadaan tersebut, ini adalah perkara litigasi kepentingan awam dan mahkamah seharusnya lebih membantu litigan-litigan kepentingan awam.

(2) Otoriti-otoriti jelas menerima pendapat yang lebih liberal dalam memberikan *locus*, khususnya kepada litigan-litigan kepentingan awam. Mahkamah sewajarnya lebih keberatan, selepas mempertimbangkan merit dan membentuk pendapat yang memihak kepada pemohon, untuk menafikan relief atas dasar ketiadaan *locus standi*. Keperluan untuk menunjukkan kepentingan perundangan dan terjejas dengan keputusan pihak berkuasa awam tidak selari dengan pendekatan yang lebih liberal dan moden terhadap litigan-litigan kepentingan awam. Berdasarkan fakta, mahkamah telah diyakinkan bahawa pemohon-pemohon bukan pencelah fantom atau campur tangan sesuka hati. Dengan itu, pemohon-pemohon dalam kedua-dua rayuan mempunyai *locus standi*. Sebaliknya, tidak ada merit dalam hujahan bahawa pemohon-pemohon dalam Guaman No. R3-25-161-2009 tidak mempunyai *locus standi*. Dengan itu, rayuan balas oleh responden ditolak.

Case(s) referred to:
Chong Chung Moi @ Christine Chong v. The Government of the State of Sabah & Ors [2007] 5 MLJ 441 ***(refd)***
Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(foll)***
Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617 ***(refd)***
Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors and Other Appeals [1997] 4 CLJ 253 CA ***(refd)***
QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532 CA ***(refd)***

Regina v. Secretary of State For Foreign And Commonwealth Affairs, Ex parte World Development Movement Ltd [1995] WLR 386 ***(refd)***

Shahidan Shafie v. Atlan Holdings Bhd & Anor & Other Appeals [2005] 3 CLJ 793 CA ***(refd)***

Tan Sri Haji Othman Saat v. Mohamad Ismail [1982] 1 LNS 2 FC ***(refd)***

Tun Dato' Sri Ahmad Fairuz Dato' Sheikh Abdul Halim v. Commissioner of Enquiry On The Video Clip Recording Of Images Of Person Purported To Be An Advocate and Solicitor Speaking On The Telephone On Matters Regarding The Appointment Of Judges Under The Commission of Enquiry Act 1950 & Another Appeal [2011] 1 LNS 1926 CA ***(refd)***

Legislation referred to:

Societies Act 1966, s. 13(1)(a)

For the appellants - S Selvarajah (R Ramanathan with him); Messrs Fernandez & Selvarajah

For the respondent - Effendi Nazila; SFC

[Editor's note: For the High Court judgment, please see Kerajaan Negeri Selangor & Ors v. Pendaftar Pertubuhan Malaysia & Another Case [2011] 1 LNS 1638.]

Reported by S Barathi

JUDGMENT

Balia Yusof Wahi JCA:

[1] These two appeals and the cross-appeal were heard together on 18 April 2013. The appeals are against the decision of the High Court in respect of two applications for judicial review in Suits No. R3-25-161-2009 and R3-25-163-2009. In both applications, the respondent is the Registrar of Society while the applicants are:

In Suit No. R3-25-161-2009 (appeal no: W-01-44-01-2012):

(i) Kerajaan Negeri Selangor;

(ii) Puan Sri Salbiah binti Tunut;

(iii) Permodalan Negeri Selangor Berhad; and

(iv) Kumpulan Darul Ehsan Berhad,

while in Suit No. R3-25-163-2009 (Appeal No. W-01-43-01-2012) the applicants are:

(i) Perbadanan Kemajuan Negeri Selangor;

(ii) Worldwide Holdings Berhad;

(iii) Selangor Industrial Corporation Sdn Bhd;

(iv) Selaman Sdn Bhd;

(v) PKNS Infra Berhad; and

(vi) PKNS Engineering & Construction Bhd.

[2] BALKIS, an acronym for Badan Amal Dan Kebajikan Isteri-Isteri Selangor, was a registered society since 17 May 1985. The membership of BALKIS was made up of wives of the Selangor State Assemblymen and members of Parliament. On 8 March 2008 the opposition party took over the government of the day. As a result of the change in the State Government of Selangor, BALKIS held an Extraordinary General Meeting on 11 March 2008 and passed a resolution to dissolve itself and transfer its funds to another society known as BAKTI. Thereafter, pursuant to s. 13 of the Societies Act 1966 (the Act) the respondent cancelled the registration of BALKIS which took effect on 11 February 2009.

[3] Before the High Court, the applicants contended that the respondent failed to comply with s. 13(1)(a) of the Act when he cancelled the registration of BALKIS without undertaking a verification of the dissolution. The alleged failure is premised on the record of proceedings at public enquiry conducted by Select Committee on Competency, Accountability and Transparency (SELCAT).

[4] The reliefs sought by the applicants briefly are as follows:

(i) an order of *certiorari* to quash the decision of the Registrar of Society (ROS) dated 11 February 2009 dissolving the Persatuan Badan Amal dan Kebajikan Isteri-Isteri Selangor (BALKIS) and cancelling the registration of BALKIS effective 11 February 2009;

(ii) an order of *mandamus* directing the respondent to reject the dissolution of BALKIS, to set aside the decision to dissolve BALKIS and cancel its registration, and to reinstate BALKIS;

(iii) a declaration that decision of the respondent dated 11 February 2009 dissolving BALKIS and cancelling its registration is illegal, null and void; and

(iv) jointly or alternatively, a declaration that the decision of the respondent dated 11 February 2009 dissolving BALKIS and cancelling its registration dated 11 February 2009 is illegal, null and void.

[5] At the conclusion of the hearing, the learned High Court Judge held that the second applicant in Suit No. R3-25-161-2009 (Appeal No. W-01-44-01-2012), Puan Sri Salbiah bt Tunut had the legitimate expectation to assume as the Yang Di-Pertua of BALKIS and hence the necessary *locus standi* to receive the remedies sought in the application and allowed the remedies in prayers (ii) and (iii) of the application with no order as to costs. The learned High Court Judge however dismissed the application of the other applicants including the application in R3-25-163-2009 (Appeal No. W-01-43-01-2012) with costs of RM20,000. Hence these two appeals before us and the cross-appeal in Suit No. R3-25-161-2009 (Appeal No. W-01-44-01-2012).

[6] Mr S Selvarajah learned counsel for the appellants intimated to us that he is only proceeding on the issue of *locus standi* and that would be the only ground of the appellants' appeal.

[7] In refusing the appellants' application for judicial review, on the issue of *locus standi* the learned High Court Judge had found that they lacked competence as they had not been able to demonstrate to the court that the decision of the respondent in de-registering BALKIS had affected their legal rights.

[8] It was submitted by Mr Selvarajah that the test used by the learned High Court Judge in finding that the appellants had no *locus standi* was wrong. Our attention was drawn to p. 55 of the rekod rayuan jilid (1) Bahagian A in Appeal No. W-01-44-01-2012 at para. 41 of the grounds of judgment which reads:

> [41] If only their commercial or financial interest which are affected, they are not sufficient to give them *locus* because their legal interests are not affected. This is also the decision in *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63. Commercial interest alone cannot even be a ground to intervene in a judicial review application as decided in *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 MLJ 307.

[9] It was submitted that the above approach taken by the learned judge was wrong. Learned counsel submitted *Tohtonku Sdn Bhd*'s case is clearly distinguishable in that the appellants' application was not an application to intervene but are suing in their own personal capacities.

[10] In his submission, learned counsel stated that in an application of this nature, the test of substantive *locus standi* is very much a test of the merits of the complaint. We have been referred to the case of *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617.

[11] Given that the learned High Court Judge had found that the decision of the respondent to cancel BALKIS was flawed and should be set aside on grounds of error of law, there was more reason why the applicants/appellants ought to have been given the standing to sue the respondent. Citing *Regina v. Secretary of State For Foreign And Commonwealth Affairs, Ex parte World Development Movement Ltd* [1995] WLR 386, learned counsel referred to a passage in the judgment at p. 395 which reads:

> Furthermore, the merits of the challenge are an important, if not dominant, factor when considering standing. In Professor Wade's words in *Administrative Law*, 7th Ed. (1994), p. 712: "the real question is whether the applicant can show some substantial default or abuse, and not whether his personal rights or interests are involved".

[12] The learned Senior Federal Counsel, Tuan Haji Effendi Nazila submitted that the appellants must at the first instant show that they have passed the threshold *locus standi* test and cited the case of *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors and Other Appeals* [1997] 4 CLJ 253.

[13] The learned Senior Federal Counsel also referred to the dissenting judgment of Hishamudin JCA in civil Appeal No. W-01(IM)-1-2009, *Tun Dato' Sri Ahmad Fairuz Dato' Sheikh Abdul Halim v. Commissioner of Enquiry On The Video Clip Recording Of Images Of Person Purported To Be An Advocate and Solicitor Speaking On The Telephone On Matters Regarding The Appointment Of Judges Under The Commission of Enquiry Act 1950 & Another Appeal* [2011] 1 LNS 1926 which was affirmed by the Federal Court.

[14] Relying on the said authority, the learned Senior Federal Counsel submitted that for the appellants to be successful in their applications, it must be shown that they have the substantive *locus standi* in that their legal rights have been affected by the decision of the respondent to deregister BALKIS.

[15] The essence of the doctrine of substantive *locus standi* was succinctly explained by Sir William Wade in his book *Administrative Law* (7th Edn.) 1994. In reference to *Inland Revenue Commissioner*'s case (*supra*) at pp. 692-693 the learned author said:

> The novel aspect of the second stage test, as thus formulated, is that it does not appear to be a test of standing but rather a test of the merits of the complainant. The essence of standing, as distinct concept, is that an applicant with a good case on the merits may have insufficient interest to be allowed to pursue it. The House of Lords' new criterion would seem virtually to abolish the requirement of standing in this sense. However remote the applicant's interest, even if he is merely one taxpayer objecting to the assessment of another, he may still succeed if he shows a clear case of default or abuse. The law will now focus upon public policy rather than private interest.

At p. 694 it was further explained:

> Although Lord Diplock's speech was the most far-reaching in terms, it is fully consistent with the majority view that the real question is whether the applicant can show some substantial default or abuse, and not whether his personal rights or interests are involved.

[16] It was submitted before us that this approach on the merits of the applicants' case has been recognised and applied by our courts in *Shahidan Shafie v. Atlan Holdings Bhd & Anor & Other Appeals* [2005] 3 CLJ 793 and *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12.

[17] Gopal Sri Ram JCA (as he then was) in the *Shahidan Shafie*'s case (*supra*) stated at pp. 802-803 thus:

> When determining whether a particular plaintiff has *locus standi* in a given set of circumstances the court must consider the action in two stages. At the first stage ("the threshold stage") assume that the fact pattern asserted by the plaintiff is true. It is just like a case of striking out a pleading for want of cause of action or

> defence under RHC O. 18 r. 19(1)(a) where the court is confined to the pleading and not to extrinsic matters. Failure or success must be considered at the second stage ("the merits stage"). If a plaintiff is found to lack standing to sue then his action fails *in limine* at the threshold stage and there is no inquiry into the merits given.

[18] This same view was earlier expressed in the dissenting judgment of Eusoffe Abdoolcader SCJ in *Lim Kit Siang*'s case (*supra*) where His Lordship at p. 43 stated:

> The House of Lords held that the Court of Appeal had been wrong, in an application for judicial review, to treat the question of *locus standi* as a threshold issue to be decided in isolation from the legal and factual context of the case; this is where the bifurcation into public law and private law aspects of litigation assumes vital significance in determining the issue. The general conclusion to be drawn from *National Federation* is that the majority thought the issue of standing should usually be considered along with the merits, as it is now a matter for the court's discretion – the graver the illegality, the less insistence on showing standing. The minority would abolish standing.

[19] Learned counsel for the appellants also submitted that the instant case is in the nature of public interest litigation wherein the disbursement and usage of public funds are in issue. The High Court in granting leave to the appellants to apply for judicial review earlier had recognised that this case has a public interest element. In granting the leave, Mohamad Ariff J (as he then was) stated:

> Further, these suits concern not merely private litigation, but have a public interest element which should incline this Court to consider the application seriously, in light of the standards mentioned, for example in the *QSR Brands* case.

[20] We found merit in the appellants' submission that the State Government and its instrumentalities had used state funds to maintain the activities of BALKIS. This has injected the public interest element in their case for judicial review. The element of public interest is further substantiated by the fact that BALKIS is essentially the welfare and charitable arm of the State Government of Selangor and was formed for the benefit of the general public of Selangor. It is therefore pertinent for the sake of public interest to obtain information, documents and explanations as to why

BALKIS was dissolved and deregistered in the way it was, what had happened to the substantial public funds which were entrusted to BALKIS and also why there was no transparency and accountability in the movement of the substantial public funds entrusted to BALKIS.

[21] In determining whether an action is in the nature of a public interest litigation, reference may be made to *QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532; [2006] 3 MLJ 164 where the court explains at p. 172 as follows:

> The test for determining whether an application is a public interest litigation is that laid down by the Supreme Court of India in *Malik Brothers v. Narendra Dadhich* AIR 1999 SC 3211, where, when granting leave, it was said:
>
> > Public interest litigation is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights. The directions and commands issued by the courts of law in public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the Court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected, it would be bounden duty of the court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated.

[22] We are unanimously in agreement with the learned trial judge and the learned counsel that this is a public interest litigation matter and we are of the view that our courts should be more willing to lend its ears to public interest litigants [see *Chong Chung Moi @ Christine Chong v. The Government of the State of Sabah & Ors* [2007] 5 MLJ 441]. We fully subscribe to the views expressed by Eusoffe Abdoolcader SCJ in *Lim Kit Siang*'s case (*supra*) at p. 45 wherein His Lordship had stated:

> I am not therefore impressed that the road to relief in regard to public law issues can be travelled only with the permission of the Attorney-General. To deny *locus standi* in the instant proceedings would in my view be a retrograde step in the present stage of

development of administrative law and a retreat into antiquity. The merits of the complaint are an entirely different matter, and we are not concerned with the personalities in the picture or whether it is a highway project or the construction of a causeway to the moon that is involved. The principle that transcends every other consideration must *ex necessitate* be that of not closing the door to the ventilation of a genuine public grievance, and more particularly so where the disbursement of public funds is in issue, subject always of course to judicial discretion to preclude the phantom busybody or ghostly intermeddler.

The effect of the denial of standing in such circumstances would be, and it has indeed been so suggested, that we will have to fold our arms and do nothing, in which event I would add we might also as well have to hang our heads in sorrow and perhaps even in mortification in not being able to at least entertain for consideration on its merits any legitimate complaint of a public grievance or alleged unconstitutional conduct.

[23] On a similar note, His Lordship, Eusoffe Abdoolcader J (as he then was) had earlier expressed the same sentiment in *Tan Sri Haji Othman Saat v. Mohamad Ismail* [1982] 1 LNS 2; [1982] 2 MLJ 177 wherein it was stated:

We refer to *Lim Cho Hock v. Government of the State of Perak & 2 Ors* [1980] 2 MLJ 148, pp. 149-151 and accept and approve the discussion in the judgment in that case (at pages 149-151) on the question of *locus standi* and endorse the concept of liberalizing the scope of individual standing. Even if the law's pace may be slower than society's march, what with increased and increasing civic-consciousness and appreciation of rights and fundamental values in the citizenry, it must nonetheless strive to be relevant if it is to perform its function of peaceful ordering of the relations between and among persons in society, and between and among persons and government at various levels. It would not perhaps be inapt to aphorize that the idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the courtroom. In the United States of America, where standing rules are relatively lax, it has been found that although the gates have been open there has been no flood.

There are also some recent cases in which the plaintiff was allowed to sue, even though he had no real grievance or injury at all, as they involved matters of particular public concern [*Blackburn v Attorney-General* [1971] 1 WLR 1037; *Regina v Greater London Council, Ex parte* [1976] 1 WLR 550; *Regina v Metropolitan Police Commissioner, Ex parte Blackburn* 7th March

A 1980], and the reasoning seems to have been that unless the court in its discretion gave the plaintiff a hearing, then no one would bring the matter to court.

We would also refer to the very recent decision of the English Court of Appeal in *Regina v Horsham Justices, Ex parte Farquharson and Anor* [1982] 2 WLR 430, 446 where Lord Denning, M.R., refers (at page 446) to the principle he had endeavoured to state in earlier cases which was endorsed by Lord Diplock in the House of Lords in *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* [1981] 2 WLR 722 (at page 737), 737, 740 and again when he said (at page 740):

> ... it would, in my view, be a grave *lacuna* in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.

[24] We are mindful of the fact that the views of Eusoffe Abdoolcader SCJ were expressed in his dissenting judgment which was also shared by Seah SCJ in *Lim Kit Siang*'s case (*supra*).

[25] In our considered view, the authorities are clear in paving the way for a more liberal view towards the granting of *locus*, especially to public interest litigants. Our courts should be reluctant having considered the merits and formed a favourable view to an applicant, to deny relief on the basis of want of standing. The requirement to show legal interest and being adversely affected by the decision of the public authority is not in tandem with the more liberal and modern approach towards public interest litigants. Borrowing the words of Eusoffe Abdoolcader SCJ, "the door to the ventilation of a genuine public grievance and more particularly so where the disbursement of public funds is in issue must be kept open". Furthermore, the appellants, we are convinced, are not phantom busybodies or ghostly intermeddlers. We must move forward, not in retrogression. Opening the gate need not necessarily mean the courts will be flooded. We must discard that fear.

[26] For the aforesaid reasons, we found that the appellants in both appeals have *locus standi*. Their appeals are allowed in terms of their prayers and we set aside the order of the High Court dated 16 December 2011.

[27] On the cross-appeal by the respondent, we found no merits in the argument of the learned Senior Federal Counsel that the second applicant in Suit No. R3-25-161-2009 (Appeal No. W-01-44-01-2012) had no *locus*. Accordingly the cross-appeal is dismissed and we affirm the order of the learned High Court Judge dated 16 December 2011 in respect of prayers (1) and (2) and set aside (3).

[28] On the issue of costs, Mr Selvarajah had suggested that there ought to be no order as to costs here and below while Tuan Hj Effendi has left it entirely to us. In the premises, we make no order as to costs here and below.